

**WRITTEN TESTIMONY**  
**Wednesday, March 20, 2008**  
**GAE Committee**

**SUPPORT for Raised Bill No 5888**

***AN ACT CONCERNING REVISIONS TO  
THE OPTICAL SCAN VOTING SYSTEM***

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The post- election audit procedure – due both to what is codified and what is not – could use prompt attention. Below I will describe areas that as a citizen audit observer have raised questions. I Have no objection to the concept of a centralized audit commission, and believe that in any case, certain items must be addressed regardless of the format of audit creation and oversight.

Below are issues and suggestions on solutions. It is wise to keep in mind whether the real intent of a professional audit and the quality of results necessary can hope to be achieved rapidly on the current path. I am not opposed to other solutions. I present info here as baseline information on what a solution should include so that, in the event that bolder solutions can't be implemented immediately, we can still continue forward making progress.

On March 6, 2008, I was the last-minute citizens' coalition audit observer stand-in filling in after several citizen audit observers had cancelled on attending the Bridgeport audit of 3 precincts. I was greeted at the door of the Wheeler Room at the Bridgeport City Council Chambers and told that the SOTS had ordered a citywide audit because “two” or “a couple” of the ballot bags had their seals cut by accident as apparently unsupervised workers, who in apparent contrast to published SOTS procedures for storage of ballots/machines, had access to the area where the machines and sealed ballots are stored and, it was explained, cut open the ballot bags to re-use them for the Town Committee election coming up in what was then the near future.

Instead of 25 number tag-sealed ballot bags, there were eleven taped but unnumbered, unsealed and unwitnessed boxes of ballots presented, and if the machine tapes (the original document to which hand counted ballots are compared in the audit) were present, I did not observe them. The ballots were intermixed by precinct, but one box contained almost all the GOP ballots. This exercise was billed as being an audit.

I believe the details are sufficient above to begin exploring and discussing what I believe is a compelling need for changing our law.

What is the source of the “machine cast ballots” number used for comparison? How does the SOTS know the number used is accurate?

**SOTS PRESENTLY DOESN'T COLLECT ORIGINAL or FAXED MACHINE TAPE AND LACKS THE ORIGINAL SOURCE OF INFORMATION FOR**

**AUDIT OVERSIGHT:** It appears that nothing in the law compels the SOTS to gather machine tapes at the election (or for moderators to submit them). At the election, the DSOTS has advised, some moderators voluntarily submit the machine tape.

From reading procedures and trying to correlate to the law, seemingly the only way the machine tape – a fundamental election document -- is required to be preserved is that it is “piggybacked” by being an attachment to other materials is the machine tape required to be preserved locally (in ballot bags and as part of the moderator’s return). The old lever machine printouts were only held for 14 days and then destroyed, but I don’t think that’s a good model for the machine tapes and it should be clear that this law may not be used as a defense for having no proof of machine tape results to use underlying corroboration of the audit report.

Federal law would seem generically to cover its preservation in some form for 22 months in federal elections.

Please codify the preservation of the machine tape and the conditions for preservation. Please specify the source of the number SOTS uses in for overseeing the audit and corroborating numbers presented on the audit report form. I believe that as a source, the number derived directly from the tape is preferable, in my opinion. Errors occur from transcribed numbers.

Please examine whether or not any data or figures from the tape (such as location, serial number of machine, date), transaction number may be used to corroborate the authenticity of the tape, or are subject to fraud. UCONN should be able to say whether any of the data on the printout is resident on the machine, or all is completely changeable.

The machine tape is also a legally stipulated data source for the audit. If the audit specifies a machine tape number be used, but the SOTS has not collected that number in a verifiable form, under what circumstances could there be a material impact on ability of SOTS to provide oversight? Is that impact most likely in the most important cases? I would suggest that most of the time, a derived number is going to turn out to be accurate – but the question is, could the SOTS recognize/independently verify it if the number were miscopied or misrepresented?

#### **AFTER GATHERING DATA – HOW BEST TO MAXIMIZE ITS USEFULNESS?**

Describing likely types of discrepancies and working to establish some clear discrepancy would help make escalation less of a judgment call and a more transparent procedure. Establishing some prima facie reasons or levels for which to escalate discrepancies while not limiting the definition of discrepancies could be useful. Rather than using the word “immediately” in the law, please consider adding specific time periods and deadlines by which such discrepancies will be escalated to UCONN for resolution.

It is a tremendous service to voters and candidates to create a law that requires officials to confront, research, and resolve problems promptly and openly. How can the law ensure that kind of response in a timely way? Setting a deadline so that discrepancies are resolved before the next election may be a start.

**The following issues may be largely addressed through SOTS suggestion of changing the date of the audits to closer to the election.**

**BALLOT SEAL ISSUE:** Currently it appears to be in doubt whether the law specifies that ballots presented for audit and the corresponding machine tapes must be under seal

through the end of the challenge period. The law refers to this paper ballot law as regards re-sealing the ballots, and one is left to infer that because the law refers to re-sealing the ballots, the intention was to have them sealed in the first place, but I believe this must be clarified. Without this provision, we don't really have a fully functional audit law. The purpose of using sealed ballots with chain of custody in tact is to be using genuine ballots cast on election night. Without adhering to this stipulation, the audit becomes meaningless both for comparison to machine function and for verifying the vote.

**MACHINE SEAL ISSUE:** Unless I am missing something, it appears that the law says that the machines must be under seal for 14 days unless there is issued a specific written directive. Without the directive, the machines can be unsealed, cards cleared, and reused in another election (In towns with many elections) even as the audit attempts to figure out if the machine functioned properly. If the audit is of machine function, shouldn't they be under seal until all escalation is completed?

**BLANK BALLOT RECONCILIATION AND DISPOSAL PROCEDURE ISSUE:**

If audits are moved up to less than 10 days after election, blank ballots must be sealed and stored separately with no person having access to blank ballots AND cast ballots, e.g. There is a 10-day disposal law – review to see whether secondary witnessed evidence of disposal is preferable to sequestering and sealing the ballots as evidence of the ballot reconciliation report's accuracy.

**INTEGRITY OF DATA ISSUE:** In Bridgeport, 25 unsealed bags of ballots came to the audit in 11 recycled and unsealed/unlabeled cardboard boxes, separate by party but not by precinct. The audit law calls for "each machine" to be compared to each machine's ballots. When they are intermingled, the audit cannot be carried out as written.

I support the law being changed to state that if the ballots are not properly preserved both under seal and intact bin groups based on precinct, **any exercise that follows is by violation of the definition not an audit and not eligible for reimbursement as an**

**audit.** 15 people worked in Bridgeport counting ballots in an exercise that from the outset clearly could not produce the precinct-level results codified as the audit procedure. I support making the law state it is illegal to reinterpret audit provisions in order to reach the superficial appearance of the ballot totals matching. I believe such misuse of the audit procedures is akin to misrepresenting election totals.

**INTEGRITY OF PROCESS PRESERVATION:** Can statute language be clarified to ensure that the audit process does not get carved up due to legal technicalities?

DSOTS Lesley Mara said that the SOTS had ordered a “citywide audit” in Bridgeport, and that because the 14-day legal requirement for keeping ballots under seal had expired; ballot chain of custody was “less of an issue.” From the point of view of someone wanting to know the machines had functioned properly, it is very much an issue that proper data be used. It appeared something that might be legal – no seals on the ballots – was also a misuse or corruption of audit procedure that is not codified into law.

When ballot seals are cut or problems are reported or discovered related to the records of an election or materials that should be under seal for an audit, the following may help.

**ISSUE OF RESPONSE TIME -- CREATE A REGIONAL RAPID RESPONSE TEAM FOR ELECTION AND AUDIT EMERGENCIES:** I believe with new technology comes the need to review responsiveness. Our equipment and cards can be compromised in 5 minutes. Could there be value in being able to respond and, if necessary, intervene with an arms’ length, honest broker, election referee if problems requiring a timely response are discovered or reported. With the Bridgeport situation, it took days before I could find someone who would listen long enough to understand the full condition of the ballots. I don’t think anyone agreed that the machines should be impounded and examined.



We have a new election administration environment, and some situations cannot wait days, weeks, or months for action. Delayed response is not neutral. Justice delayed etc.

Prompt response is part of a commitment that the people's votes are counted correctly and preserved securely, such that the intent of the people is well carried out.

If there's a problem, a referee should be dispatched to freeze-frame the situation and act as a liaison that can provide neutral information about the conditions. If this had happened in Bridgeport, there is at least some chance that some of the ballots could have been preserved and a citywide vote count that didn't fit the definition of an audit from the start. As soon as the ballots are compromised, then the machine and card are the only potentially uncompromised data about how the election went, and there is no reason to be confident that they are, or will remain so. The card should be examined to determine that ballot corruption is not related to election reporting irregularities and an attempt to cover them up. One cannot accept at face value without corroboration the reported reasons for irregularities. This is not an accusation, but simply the skepticism required in an auditing situation.

**CREATE HOTLINE FOR ELECTION/AUDIT:** When I observed the Bridgeport audit, I was (and still am) very concerned that the data in the memory cards in the machines would be erased for the third upcoming election in Bridgeport and all verifiable information about that election would be lost. I believe that I did not succeed in convincing either the SOTS or SEEC that timely sequestering of the machines or cards was important. If I were a candidate, I would find the time needed to communicate concerns and the inability to generate concern about the records of the election a source of concern.

A hotline coupled with regional rapid response team could have responded differently to a call about ballot seal breaches, taking a look at underlying logistical issues, perhaps even impounding the machines and ballots in a secure area until local security problems could be taken care of.

In addition, I have read that surveys indicate that hotlines are among the biggest sources of identifying corporate fraud, even more so than audits. The rest of the time, a combination of accepting citizen or election worker information and routing information to the appropriate agency may be handled via a hot line.

**AUDIT DATE LEEWAY IS DOUBLE EDGED SWORD:** I ask that the GAE Committee please consider a formula for audit date selection that requires audit to be conducted at so as to allow for response time if issues found. This is an issue in towns that may have multiple primaries or elections, a relative handful probably. In Bridgeport the audit was conducted on a Thursday, results sent Friday, and the state senatorial election was Tuesday. I do not know if the memory cards were ever examined in relationship to this ballot seal breach situation. Bridgeport worked from June 07 till March getting ready for and handling these elections, ROV Ayala said. It's clear ROVs will really appreciate some flexibility, but the ability to conduct full oversight must take priority. Scheduling audits at the last minute, coupled with problematic data, is a recipe for insufficient oversight.

**PUBLIC POSTING OF AUDITS 5 DAYS IN ADVANCE:** The public has a right to know when an audit is and should not call to discover it has already been held. GAE/legislature can help provide a low cost oversight of elections, if the GAE and legislature will state that audits must be conducted with warning, state where and how warning must be posted (website, town website, etc.). **Audits conducted with no warning are private ballot handling sessions.**

**SET CLEAR BOUNDARIES ON WHAT IS/IS NOT AN AUDIT. CODIFY A PLAN FOR ESCALATION. IDENTIFY SPECIFIC PARAMETERS FOR NOTIFYING AND ESCALATING TO SEEC OR OTHER INVESTIGATIVE BODY**

Written procedures, and clear rules about what is and what is **NOT** an audit, are necessary to drive quality of the audit sharply upward and prevent Audits In Name Only that amount to feel good exercises only to those who don't examine them carefully.

Otherwise, there is a real risk that the audit law could be legally interpreted into an unrecognizable patchwork of compromised materials and jury-rigged procedures that yields meaningless though technically legal results, but results not bearing relationship to anything intended with the audit procedure was created.

I very much appreciate the presence of the audit law and do not wish for this to happen. Please fix this and **define the procedure as required to be performed precisely as specified using materials specified, and not separable, not re-interpretable, and not an audit if the rules are not followed to the letter.**

The best fix would be to remove the audit from the SOTS and have professionals at arms' length creating the procedure, administering the procedure, and escalating to appropriate areas any further examination or investigation of nonstandard audit procedures, material conditions, or results. It is far from ideal to have a technical experts create the audit protocol, and have administrators making judgment calls about when to escalate that are not based on something created in the protocol.

It is a disservice to credit a professional with creating an audit protocol, and then fail to adhere to it. At worst, the risk is that the professional advice could be used to put a patina of respectability on an inexact interpretation of the audit that renders its result unreliable. It is equally a disservice to parse the provisions of the audit law and not interpret the procedure as a complete and whole entity.

**CODIFY ROLE OF SEEC OR INVESTIGATIVE BODIES. MAKING ELECTION RESULT PRESERVATION A PRIORITY. PLACE PRESERVING PHYSICAL INFORMATION OVER ACHIEVEMENT OF ADMINISTRATIVE PROCEDURES.**

Auditing compromised ballots without consulting first with the SEEC risks destroying information useful to the SEEC. There should be clear parameters, developed with the SEEC, for people receiving first-line reports of unusual or irregular situations. **The goal is to act in a way that conserves options and proceeds logically.**

In the Bridgeport audit of March 6, upon opening the unsealed recycled boxes filled with intermingled ballots of all types – not just machine cast ballots -- one particular team opened a box containing nearly all of the GOP ballots. The possibility of examining whether e.g. the ballots came from two highly GOP precincts or came to this condition some other way such as presorting was lost forever, by definition, by not placing preservation of information in a known compromised situation as paramount.

**The SOTS written procedures – not codified stipulations – say that if the ballot bag seal doesn't match, the step is to call the SOTS rather than the SEEC.** I recommend codifying immediate referral to the SEEC for a ruling on whether an audit or any exercise that destroys the condition of the ballots for investigative review may take place, when, and under what conditions.

Since election officials are steeped in the culture that the Show Must Go On, perhaps codified permission to get a ruling on calling off an audit and taking other investigative steps would be helpful.

The impact of not consulting the SEEC or sending SOTS or SEEC people to assess the situation in Bridgeport is that an SOTS ordered procedure effectively and irrevocably dismantled the opportunity to learn from the condition of the ballots by repeatedly sorting and counting them. Such condition may have corroborated the ROV's explanation of events, or suggested further exploration of events. That opportunity was lost.

## **CODIFY ARMS LENGTH RELATIONSHIPS AND RESOLVE CONFLICTS OF INTEREST:**

**The structural placement of the SOTS between the examination of the machine/ballots and the reporting of discrepancies could prove problematic.** This has been explored in much earlier testimony so I won't expand on it.

We have another potential issue in that the **UConn experts are paid by SOTS**. What happens if a complaint alleging some kind of computer related wrongdoing by the SOTS is filed? Is there a conflict of interest there that is not in the citizens' best interests to maintain?

**SOTS should not make escalation decisions.** The impact on the agency and on decisions made by the SOTS inherent in the discovery of audit discrepancies or irregularities bears too much conflict of interest. The SOTS should not have to recuse herself – the law should take care of that. Perhaps parallel reporting of results to several bodies might help.

I believe there is a conflict of interest when **election officials audit their own towns' results**. A drawing to assign an ROV to another town to lead the audit is at least a minimal hat tip to the importance of arms' length neutrality. Likewise, removing the audit function from SOTS or codifying particular parallel reporting of results and responsibilities for escalation are important end results of changes in the law. I don't have what I consider to be a perfect answer, but ask that you make some attempt at resolving conflict of interest questions.

Please consider whether **relatives of officials** conducting an audit should be permitted to be on the counting teams. We had some very dedicated and helpful relatives working on the Bridgeport audit, and it's tough to find counters – Bridgeport had 12 counters and 3 officials. We just need to resolve whether there are any arms' length situations that should be considered.



## **DISCUSSION OF SPECIFIC ISSUES RELATED TO RETENTION UNDER SEAL:**

Below questions about retention under seal are more fully explored.

Questions and issues considered in this testimony include: considering whether ballot seal periods prior to audit require additional language, clarifying whether memory cards for voting machines are included in the HAVA 22-month retention period, and whether that period must occur under seal. and updating statutory language so that old language is not misinterpreted to give early release from seal.

**QUESTION: Where might changes be made in current statutes regarding retention periods, so that sealed retention is sufficiently long to cover the post-election audit procedure, escalation, and any citizen/candidate challenges that occur as a result of the audits?**

**Documents and materials underlying the audit** and needing to be preserved in original form include: 1) **machine cast ballots**, properly sealed and under unbroken chain of custody, 2) the **memory cards** in the machines, sealed and preserved 3) the machine-generated election result reports **tape** on which the record of machine cast ballots appears and 4) the **machine** itself, confirmable by its serial number (or numbers, if election day switches occur.

At present, only SOTS procedure makes reference both to the requirement that **ballots** be retained under seal prior to the audit and the requirement that they not be opened or handled prior to the scheduled start time of the audit. Statutes refer to 9-302 in reference to **resealing** the ballots, implying they were originally sealed, yet statutes do not specify the step of checking ballot condition at the start of audit or retaining them in sealed condition between election and audit, after the 14 day period under which they are presently sealed. **Public Act No. 07-194** in paragraph (j) references returning ballots to a sealed condition, implying that they came out from under seal, but this is not referenced

as to the original ballot condition. Sec 9-302 was originally about paper ballots used in response to insufficient lever voting machines.

HAVA language refers to 22-month federal election retention period for all election related materials. Some states have interpreted this mandate to include **memory cards**. Is language needed to clarify and direct ROVs on this point? Does the interpretation of HAVA memory card retention impact the desire to test it after the election (UCONN)?

**Machine tape** results do not seem to have been specifically codified to be retained (although they are retained for 6 months as part of the moderator's return, it appears and are placed in the ballot bag so might be interpreted to stay there for the duration). Nor does it appear instructions have been codified to send a facsimile of the machine tape results and serial number to the SOTS on election night, so as to have comparative information for possible post election audit. SOTS is not requesting this (that I know of), but the validity of the audit report appears to rely in part on confirming that the correct number is used for the "ballot total" comparison to counted paper ballots.

**Background** – My research suggests that machine printouts are printed in triplicate: one for the ballot bag (no retention period stated), one for the public posting, and one attached to the tally sheet that is appended in the moderator's report, which goes to the head moderator/ROV, the numbers are sent to the SOTS and then the moderators' reports seem to go to the clerk for storage.

If provision is not made to send tape facsimile to SOTS, the machine tape may never be sent to the SOTS, meaning that an important number used on the audit report by ROVs - the machine tape results – cannot be verified by the SOTS. Look for **machine serial number** and if not on tape, record it to confirm which machine counted the ballots.

NOTE: The name of the precinct on the tape is not what is important – the serial number is. Machines may be changed out and precinct name would be reprogrammed.



This section could be changed or removed: **Sec. 9-314. Return of list of votes by moderator** Machine printouts from lever machines are retained for two weeks and destroyed – should this language be dropped or clarified? .

**Machine** lockdown period of 14 days in statutes presently by law must be extended in writing. For audit purposes, should automatically be extended on towns that will be audited. The language might be changed to either unseal or extend seal on the 15th day (which is day of the random drawing for audits), If selected for audit, date on which SOTS issues written release to unseal machines as long as all related conflict and discrepancies have been researched. I would argue that the lockdown might be interpreted as not forbidding inspection of machine at direction of SOTS for purposes of examining machines to determine if they were the source of audit discrepancies. **Sec. 9-310. Locking of machine by moderator** is source of current language, it appears. If there are irregularities in the audit, the machine becomes one of the key places to look for discrepancies, so holding it securely is important. For security purposes, the recommendation as to general lockdown condition might benefit from being reworded altogether based on advice of UCONN. For example, it might be locked down all the time, except for specific windows, occasions, and circumstances.

The law might be updated to specify that the moderator submit a copy of the machine tape along with the return form. If the tape does not print out the **serial number of the machine** on it, the head moderator should write that number on the tape of the machine that produced the tape, so that SOTS can follow audit results using this info. If ballots were not completely printed with one machine, that should be conveyed

## **DISCUSSION OF SECURE STORAGE OF BALLOTS AND VOTING MACHINES, MEMORY CARDS**

**SUMMARY:** How will the CT General Assembly specify and provide for the secure storage of cast ballots and voting machines/memory cards?

I recommend storage provisions be codified and enforceable, so that adequate security and unbroken chain of custody that is critical to machine and ballot security can be ensured. Existing statutory language and the SOTS procedures manual provide possibilities; in addition, I have added some parameters to consider that relate directly to issues with voting machines and paper ballots.

**DISCUSSION:** The SOTS moderators' procedure manual says the following:

**. STORAGE OF TABULATORS AND BALLOTS**

1. *The voted ballots and the tabulator, with the memory card still in place and the seal still intact, should be returned to the designed central secure locations by the assistant Registrars, or two election officials of different parties. Upon arrival, the Registrars should insure the seals on the tabulator carrying case and the ballot transfer case are intact & match the numbers recorded on the Moderator's Return. Any discrepancy should be noted and explained in writing.*
2. *The sealed ballot transfer case and the tabulator with the memory card still sealed in place should be stored in a locked storage location not generally accessible. A log should be maintained of all persons having access to that storage location. The log should show the names dates times and purposes for all persons having access to that storage location.*

*The secure long-term or short-term storage location in which to store the marksense tabulators and memory cards shall have the following characteristics: (1) The location shall remain locked at all times; (2) Access to such location shall be exclusively controlled by the Registrars of Voters; (3) Access shall only be granted to such location for the purpose of tabulator programming, maintenance, testing or set-up; and (4) the secure short-term storage location may only be used for storage after adjustment and programming of the tabulators has taken place pursuant to 9-242a-4 and until the close of the polls on election day.*

The log referenced above should be fully described as to its being bound and all entries made in indelible ink, no overstrikes or crossing out that render entry illegible, and corrections noted below entries crossed out with a single line. Log should be available for review, and where it will be kept/by whom. Failure to keep log – any penalties should be noted.

Two possible statutes may apply or be able to be referenced in regard to the storage issue:

**CT statute 7-27. Municipal records to be kept in fire-resistive vaults or safes.** This statute does not specify ballots; it says “town records”, in case that would have to be clarified. This may related to clerks; it is not clear to me. The language related to registrars and storage is located in **Sec. 9-5a. Towns to supply registrars with office space and supplies. Records.** **Sec. 9-5b. Retention of records by registrars.**

Sec. 9-5a holds registrars “jointly responsible” for safekeeping of records. Please consider clarifying what this means – two locks and each has their own distinct key? Or both must have access – no one ROV is exclusively responsible?

#### **Parameters for storage:**

1. Specify acceptable containers for ballot storage (characteristics). If cardboard boxes, all seams should be sealed with overlapping tamper evident tape should be used on all seams, signing the overlaps.
2. A signed witnessed seal (also tamper evident) on top seam or where appropriate on type of container – seals should be inventoried, controlled, and numbered. Adhesive must not peel off and reseal.
3. Specify features of type of seal – current seal can be cut with scissors – other seals are made e.g. with wire cable in them are also available and would require some planning/tools to be broken. Some numbered tags are rather easily counterfeited in a number of minutes.

4. Specify that blank ballots and felt tip pens may **NOT** be stored in the same area as cast ballots from the same election.
5. Specify that after counting and recording ballot reconciliation report paperwork, the ballots will be sealed in a specified container and a tamper evident, witnessed seal be placed on the container in which it will be stored until destruction (avoid activities like repacking of ballots), all blank ballots will be sealed on election night into containers and stored until destroyed, at which time they will be publicly or witnessed recounted, any discrepancies noted and reported to the SEEC or auditing commission.
6. Seek a way so towns do not store all the key vital records from an election that might be used to verify the votes in one place, together. The cast ballots (except for absentees?), the memory cards/machine, are stored in the same storage room in some towns.
7. Provide an alternate means to store that meets the intention of the SOTS guidelines. For example, if self-contained storage areas are suitably secured with locks that are not easily tamperable (not easily replicable locks, such as used on the voting machine or average office desk drawer), then space might be used for more than exclusive access by ROV.
8. Provide for how the ROVs may / may not use their keys. Can they lend them? Must that person sign a key access log and date/time mark it?

Many towns may have logistical challenges to resolve, especially where storage areas have multiple uses. Proposing ways to meet the requirements of secure storage while recognizing the limitations of their space situation will make ballot and machine security more feasible. Good sources of input: state police crime lab, UCONN computer consultants—what parameters constitute well designed storage and keep the computers safe from hacking/ballots safe from being compromised?

**All the fancy audits in the world will be pointless if our ballots and machines are not securely managed at all times. Addressing storage is essential to fully address chain of custody issues for our ballots, if we truly regard them as the true and accurate record of voter intent.**